

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.8.759 pertaining to)
review of permit applications)

NOTICE OF AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On August 11, 2005, the Board of Environmental Review published MAR Notice No. 17-228 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1476, 2005 Montana Administrative Register, issue number 15.

2. The Board has amended the rule as proposed, but with the following changes:

17.8.759 REVIEW OF PERMIT APPLICATIONS (1) through (4) remain as proposed.

(5) The department may, on its own action, or at the request of the applicant or member of the public, extend by 15 days the period within which public comments may be submitted as described in (4)(b)(ii) and the date for issuing a final decision on a permit application as described in 75-2-211(9)(b), MCA, under the following conditions: if the department finds that an extension is necessary to allow the department to make an informed decision.

~~(a) if the department finds that an extension would serve the public interest;~~

~~(b) upon request of the applicant or a member of the public and if the request for an extension is submitted to the department by the date that written comments on the preliminary determination originally were due; or~~

~~(c) if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30 day comment period.~~

(a) Any request for an extension, as provided under (5), by the applicant or a member of the public must be submitted to the department by the date that written comments on the preliminary determination originally were due.

(b) The department shall extend the comment period if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30-day comment period.

~~(6) (c) The department shall notify the applicant of any extensions requests that are granted under (5).~~

(7) remains as proposed, but is renumbered (6).

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: EPA commented that it would be more appropriate to require a 30-day public comment period for those preliminary determinations that contain one or more requirements of 40 CFR part 63 instead of the current language, which states that the Department may extend the public comment period by 15 days (to 30 days) if such requirements were applicable.

RESPONSE: The Board agrees with the comment and has amended the proposed rule to reflect the change. The proposed rule now states, "The Department shall extend the comment period if the preliminary determination contains one or more requirements of 40 CFR part 63 ..., that require a 30-day comment period."

COMMENT NO. 2: The Board received comments that the proposed rule should provide at least some objective criteria by which to determine whether or not a request for an extension should be granted. Specific language was suggested to include the criteria that the Department would need to find that an extension was necessary to allow the Department to make an informed decision.

RESPONSE: The Board agrees with the comment and has amended the proposed rule to reflect the proposed language.

COMMENT NO. 3: The Board received comments that state while the commentor supported an extension of the comment period for complex applications where there is significant public interest, the rule as proposed would make the 30-day comment period essentially automatic. One commentor requested revised language that would allow for 15-day extensions only when the extension request "sets forth unique circumstances justifying an extension." Another commentor requested revised language that would require the requestor to provide some specific explanation as to why an extension was warranted and the Department to make some specific finding about why the usual statutory period is inadequate for the permit at hand.

RESPONSE: The Board does not find that the hearing record supports requiring the requestor to cite "unique circumstances" or requiring the Department to make a finding that the 15-day comment period is inadequate in order to allow additional public comment.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ DAVID RUSOFF
DAVID RUSOFF
Rule Reviewer

By: /s/ JOSEPH W. RUSSELL
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, December 12, 2005.